

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 28th July, 2014.

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WP(C) No.6041/2001

MANOJ KUMAR MUDGAL

..... Petitioner

Through: Mr. Rajesh Dwivedi for Mr. A.K.
De, Advocate.

Versus

**INDIAN INSTITUTE OF TECHNOLOGY,
DELHI**

..... Respondent

Through: Mr. Yeeshu Jain and Ms. Jyoti
Tyagi, Advocates.

AND

WP(C) No. 6042/2001

RAJEEV TOKAS

..... Petitioner

Through: Mr. Mr. Rajesh Dwivedi for
Mr. A.K. De, Advocate.

Versus

**INDIAN INSTITUTE OF TECHNOLOGY,
DELHI**

..... Respondent

Through: Mr. Mr. Yeeshu Jain and
Ms. Jyoti Tyagi, Advocates.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Both petitions impugn the separate but identical Office Memorandums, both dated 10th July, 2001 of the respondent IIT, Delhi

discontinuing the services of each of the petitioners as Swimming Coach-cum -Life Guard in the respondent IIT with immediate effect. The petitions also seek the relief of reinstatement of each of the petitioners with all consequential benefits and regularization of the services of the petitioners on the post of Swimming Coach- cum- Life Guard with consequential reliefs in that regard also.

2. Notice of the petitions was issued. Subsequently 'rule' was issued in both the petitions on 16th July, 2003. The petitions came up for hearing on 3rd July, 2014 when it was inquired from the counsel for the petitioners as to how the petitioners were entitled to the relief claimed of regularisation, particularly in view of the judgment in *Secretary, State of Karnataka Vs. Umadevi* (2006) 4 SCC 1. The counsel for the petitioners on that day sought adjournment to obtain instructions whether the petitioners wanted to prosecute these petitions. Today the counsel for the petitioners states that the petitioners want to press these petitions. The counsel for the petitioners and the counsel for the respondent IIT have been heard.

3. It is the case of the petitioners that; i) the respondent IIT, Delhi in April, 1998 invited applications for the post of Swimming Coach-cum-

Life Guard; ii) the petitioner in WP(C) No.6041/2001 applied and appeared before the Five Member Interview Board and was selected and was issued an appointment letter dated 15th April, 1998; iii) sometime in April, 2000 the respondent IIT, Delhi again invited applications for the post of Swimming Coach-cum-Life Guard and the petitioner in WP(C) No.6042/2001 applied and appeared before the Five Member Interview Board and was selected and was issued an appointment letter dated 24th April, 2000; iv) however the appointment letters issued to both the petitioners stated the appointment was temporary and for a period of six months with a consolidated salary of Rs.4500/- p.m. in appointment letter dated 15th April, 1998 and of Rs.5000/- in the appointment letter dated 24th April, 2000 and the same was liable for termination on giving one month's notice in writing on either side; v) that another appointment letter was issued to the petitioner in WP(C) No.6041/2001 on 12th March, 1999 for a period of one year with effect from 1st April, 1999 with a consolidated salary of Rs.5500/- and also with a condition that the same was liable to be terminated by giving one month's notice on either side; vi) yet another appointment letter dated 24th April, 2000 was issued to the petitioner in W.P.(C) No.6041/2001 for a period of one year w.e.f. 1st

May, 2000 on a consolidated salary of Rs.6000/- terminable on one month's notice on either side; vii) yet another appointment letter dated 9th April, 2001 was issued to the petitioner in W.P.(C) No.6041/2001, this time for a period of six months w.e.f. 16th April, 2001 on a consolidated salary of Rs.6200/- terminable on 15 days' notice on either side was issued; viii) similarly the petitioner in WP(C) No.6042/2001 was issued another appointment letter dated 9th April, 2001 for a period of six months w.e.f. 16th April, 2001 on a consolidated salary of Rs.5700/- terminable on 15 days' notice on other side; ix) however the respondent IIT vide Memorandums (supra) both dated 10th July, 2001 terminated the services of both the petitioners because of adverse remarks received from the office of Deputy Commissioner of Chief Licensing, Delhi.

4. The contention of the petitioners is:

- a) that they had continuously worked with the respondent IIT for a period of over three years excepting some artificial breaks;
- b) that the adverse remarks received from the office of Deputy Commissioner of Chief Licensing, Delhi were not communicated to the petitioners and no opportunity was given to them to meet the same;

- c) that the respondent has acted mechanically on the dictate of another agency without application of mind;
- d) that the termination dated 10th July, 2001 is stigmatic in nature and without opportunity of hearing;
- e) that a Committee constituted in relation to the death of one Mr.Amit Agnihotri on 23rd August, 2000 in the swimming pool had also not found the petitioners negligent of their duties;
- f) that the petitioners fulfilled all the requirements for appointment to the post of Swimming Coach-cum- Life Guard and the said post is of a permanent nature and the petitioners having worked on the post for more than three years ought to have been regularized.

5. Per contra, it is the version of the respondent IIT, Delhi, a) that for the recreational and extracurricular activities including swimming, of the students of the respondent IIT Delhi, contractual appointments are made; b) that the service condition of the contract employees are totally different from those of regular employees of the respondent IIT Delhi; c) the contractual employees are not appointed to any sanctioned post; d) that the contractual amounts are paid out of the fund/ fee received from the students at the time of their admission; e) that from time to time advertisements for such contractual posts inviting applications were

published and the petitioner in WP(C) No.6041/2001 repeatedly selected and the petitioner in WP(C) No.6042/2001 was selected twice; f) that the gaps in appointments are not artificial; g) because there is no sanctioned post of Swimming Coach-cum-Life Guard, the question of regularising the petitioners does not arise; in fact there is no regularisation scheme in the respondent IIT, Delhi; h) reliance in this regard is placed on judgment dated 15th March, 1994 of the Division Bench of this Court in CWP No.2875/1993 titled ***Ved Prakash Gautam Vs. IIT, Delhi*** and judgment dated 6th March, 1996 of the Division Bench of this Court in CWP No.2273/1995 titled ***Ms. Amita Gulati Vs. Union of India***; i) that the respondent IIT, Delhi had received a letter dated 9th July, 2001 from DCP Licensing with regard to the death of a student of the respondent IIT due to drowning on 23rd August, 2000 in the swimming pool, whereby respondent Institute was directed to appoint responsible and trained life guards in place of existing life guards; j) that the DCP Licensing is the authority which gives the licence to open and run a swimming pool.

6. No rejoinder has been filed by the petitioners to the pleas aforesaid in the counter affidavits of respondent IIT.

7. The counsel for the petitioners today, in response to the query raised in the hearing on 3rd July, 2014, states that though it is not controverted that in view of the judgment in *Umadevi* (supra) the relief of regularisation cannot be granted but seeks that some compensation be granted to the petitioners.

8. I am unable to agree. The letters of appointment of the petitioners clearly show the appointment to be temporary and for the duration mentioned in the letter and liable to be terminated by notice as aforesaid. It is not the case of the petitioners that the respondent IIT is in breach of terms of the said contractual appointment for the petitioners to be entitled to any damages for breach of contract. The petitioners were fully aware that their appointments were temporary and contractual and rather in acceptance of the same, from time to time in response to the advertisements, applied and entered into fresh contracts with the respondent.

9. The petitioners have also not shown anything on record that there is any sanctioned / permanent post of a Swimming Coach-cum-Life Guard in the respondent IIT.

10. The Division Bench of this Court in *Amita Gulati* (supra) also pertaining to the respondent IIT held that temporary engagement/appointment to a particular tenure post or on project post of limited duration does not create any right for regular appointment and that such engagement comes to an end by efflux of time or upon completion of the project.

11. As far as the argument of the termination being stigmatic is concerned, I have perused the Memorandums dated 10th July, 2001; the same simply refers to the letter of the Deputy Commissioner of Chief Licensing, Delhi and cannot be said to be stigmatic in any manner whatsoever.

12. There is thus no merit in these petitions which are dismissed. No costs.

RAJIV SAHAI ENDLAW, J.

JULY 28, 2014
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